THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BERKELEY COUNTY
COURT OF COMMON PLEAS

The Honorable Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2024-002032
Case No.: 2021-CP-08-00087

Tunc Eren ..... Respondent,

v.

AKPA Chemicals US, Inc. ..... Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant is asking the Court of Appeals to reverse the decision of the Honorable Judge Jennifer McCoy (hereinafter the "Circuit Court" or "Judge McCoy"). .

On October 17, 2024, a bench trial was held before Judge McCoy. Appellant brought forth ten (10) causes of action, and Respondent brought forth a counterclaim. On October 29, 2024, Judge McCoy entered a verdict for Respondent as to all ten of Appellant's causes of action, stating that Appellant "failed to meet the burden of proof on any claims by a preponderance of the evidence." Regarding Respondent's counterclaim, Judge McCoy found for Appellant and stated that "the court finds [Respondent] failed to meet his burden of proof as to the requisite elements."

STANDARD OF REVIEW

This case was heard by the Circuit Court Judge at a bench trial without a jury. However, Appellant alleged various causes of action, which have different standards of review.

"When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." Corley v. Ott, 326 S.C. 89, 92 n.1, 485 S.E.2d 97, 99 n.1 (1997); See also Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 270, 705 S.E.2d 73, 75 (Ct. App. 2010).

Appellant's Complaint contained a cause of action for "Quantum Meruit/Unjust Enrichment". See p. 7-8 of the Complaint. "A proceeding in quantum meruit is equitable." See Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259 n.1, 262, 440 S.E.2d 129, 131 n.1 (1994); QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 107-08 (Ct. App. 2004) (applying an equitable standard of review to an action in quantum meruit).

"In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." Inlet Harbour v. S.C. Dep't of Parks, Rec. & Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008). "We review factual findings and legal conclusions in an equitable action de novo." Lewis v. Lewis, 392 S.C. 381, 388–89, 709 S.E.2d 650, 653–54 (2011). "However, we are not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." Straight v. Goss, 383 S.C. 180, 192, 678 S.E.2d 443, 449 (Ct. App. 2009). "Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." Pinckney v. Warren, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001). "[W]hen an appellate court chooses to find facts in accordance with its own view of the evidence, the court

must state distinctly its findings of fact and the reason for its decision." Dearybury v. Dearybury, 351 S.C. 278, 283, 569 S.E.2d 367, 369 (2002).

"An action for breach of contract seeking money damages is an action at law." Eldeco, Inc. v. Charleston County Sch. Dist., 372 S.C. 470, 476, 642 S.E.2d 726, 729 (2007); See also Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct.App.2004). "An action for conversion is an action at law." Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct.App.1986). "On appeal of an action at law tried without a jury, the findings of fact of the trial court will not be disturbed unless found to be without evidence which reasonably supports the trial court's findings." Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "Stated another way, the trial court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law." Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 127, 631 S.E.2d 252, 255 (2006). "In such a case, the trial court's findings are equivalent to a jury's findings in a law action." Id. "Of course, we review de novo the trial court's legal conclusions in an action at law." Temple v. Tec-Fab, Inc., 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). However, "[Q]uestions concerning credibility and the weight to be accorded evidence are exclusively for the trial court." Ward v. West Oil Co., 379 S.C. 225, 238, 665 S.E.2d 618, 625 (Ct.App.2008).

STATEMENT OF FACTS

Appellant is engaged in the chemical manufacture and supply business. On or about February 26, 2018, Respondent began working for a company affiliated with Appellant in Turkey. On or about March or April of 2019, Respondent was offered a position with Appellant in South Carolina. Appellant then paid for Respondent's travel from Turkey to Berkeley County, South Carolina.

Once Claimant relocated to Berkeley County, South Carolina, on or about May 1, 2019, Appellant and Respondent entered into and executed an employment contract (hereinafter the "Contract"). Pursuant to the Contract, Respondent was employed by Appellant as General Manager for Appellant's facility in South Carolina. Respondent was the highest-ranking employee for Appellant in South Carolina. In order to aid Respondent in his role as General Manager, Appellant provided him with resources and corporate benefits, including, but not limited to:

a. A laptop computer (hereinafter the "Laptop") containing proprietary and confidential information.

b. A cellular mobile phone (hereinafter the "Cell Phone").

c. Rent payments on a monthly basis for Respondent's apartment (hereinafter the "Rent Payments").

d. Payment of the security deposit for Respondent's apartment (hereinafter the "Security Deposit") in the amount of $2,239.08.

e. A motor vehicle (hereinafter the "Vehicle") for which Appellant paid $5,000.00 as a down payment. Additionally, Appellant made all of the monthly payments ($465.65 per month) for the Vehicle and also paid for the insurance on the on the Vehicle. However, unbeknownst to Appellant, Respondent titled the Vehicle in his name only.

On February 12, 2020, Appellant advised Respondent it would not be renewing Respondent's Contract once it expired on May 1, 2020. On March 9, 2020, Respondent made an unauthorized and unapproved withdrawal from Appellant's bank account in the amount of $21,042.57. The very next day, on March 10, 2020, knowing his employment with Appellant would not be renewed, Respondent resigned from his employment with Appellant. After Respondent's March 10, 2020 resignation, without authorization or approval from Appellant, Respondent made an unauthorized payment out of Appellant's bank account in the amount of $10,730.61 to pay off the Vehicle.

In the days after Respondent's resignation, Appellant learned Respondent withdrew and/or caused to be paid to a third party the sum of $31,773.18, which is the sum of the March 9, 2020, $21,042.57 withdrawal and the $10,730.61 payment for the Vehicle. After Respondent resigned from Appellant's employ, he also collected the Security Deposit and has not returned it to Appellant.

As General Manager, Respondent was in charge of numerous day-to-day tasks, including setting up the phone lines for Appellant's facility in South Carolina. Upon information and belief, rather than set up the phone lines in Appellant's corporate name, Respondent set up the phone lines in his own personal name (hereinafter the "Phone Account"). Following Respondent's resignation, Appellant learned it was unable to access important Phone Account information as a result of Respondent's actions. Appellant was required to set up an entirely new account with new phone numbers, which cost time and money. Moreover, Appellant spent time and money on marketing materials which contained the old phone number. As a result of Respondent's actions, these marketing materials with the old phone number could no longer be utilized and Appellant had to pay for new marketing materials that would contain the new phone number.

Since Respondent's resignation, Appellant has made numerous attempts to contact Respondent to recover the Laptop, the Cell Phone, the Security Deposit, the Vehicle, and the $31,773.18, all of which Respondent has either illegally taken and/or withheld from Appellant. Additionally, following his resignation, Respondent filed a frivolous and malicious claim with the South Carolina Department of Labor ("SCDOL"). As a result of this claim, Appellant was required to spend unnecessary time and money defending itself against Respondent's allegations. Ultimately, Respondent's claim was unfounded by the SCDOL investigator. Moreover, the SCDOL investigator agreed Respondent has improperly retained the Vehicle, and the investigator also determined Respondent improperly withdrew $21,042.57 from Appellant's bank account. On November 2, 2020, Appellant served Respondent with a letter demanding return of the Laptop, the Cell Phone, the Security Deposit, the Vehicle, and the $31,773.18, which the Respondent took from Appellant without authorization.

To date, Respondent has not returned the Laptop, the Cell Phone, the Security Deposit, the Vehicle, and/or the $31,773.18 to Appellant.

ARGUMENTS

1. RESPONDENT WAS UNJUSTLY ENRICHED WHEN HE USED APPELLANT'S FUNDS FOR UNAUTHORIZED PURPOSES, RETAINED APPELLANT'S FUNDS HE WAS NOT ENTITLED TO, AND WHEN HE RETAINED AND SOLD APPELLANT'S COMPANY VEHICLE THAT WAS PAID FOR ENIRELY BY APPELLANT.

Under South Carolina law, a party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App.1988). Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Id.

Furthermore, a party can be unjustly enriched when it has and retains benefits or money which belong to another. Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 678 S.E.2d 430, 434 (2009).

To recover for unjust enrichment, a plaintiff must show: (1) a benefit conferred upon the defendant by plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for it to retain the benefit. Brooks v. GAF Materials Corp., 41 F. Supp. 3d 474, 485 (D.S.C. 2014) (citing Ellis v. Smith Grading & Paving, Inc., 294 S.C. 470, 366 S.E.2d 12, 15 (S.C.Ct.App.1988)).

Appellant and Respondent maintained an employee and employer relationship that began on May 1, 2019, and ended on March 10, 2020, when Respondent resigned from AKPA. See Appellant's Exhibit 7.

Furthermore, the Appellant provided Respondent with the Laptop, the Cell Phone, the Vehicle, the Rent Payments, and the Security Deposit, pursuant to the employee and employer relationship.

During his employment, Respondent knowingly and voluntarily accepted the company property provided by Appellant. However, following Respondent's resignation, Respondent took actions to unjustly retain Appellant's property without paying any value to Appellant whatsoever; including, but not limited to, the following:

a. Failing to return the laptop;

b. Failing to return the Cell Phone;

c. Taking the Security Deposit; (See Appellant's Exhibits 1 & 8).

d. Failing to return the Vehicle; (See Appellant's Exhibits 4 & 5)

e. Taking $10,730.61 from Appellant's bank account to pay off the balance of the Vehicle without Appellant's authorization or approval; (See Appellant's Exhibit 3)

f. Taking $21,042.57 from Appellant's bank account without Appellant's authorization or approval; and (See Appellant's Exhibit 3)

g. Failing to properly set up the Phone Account in Appellant's name.

Respondent was employed by Appellant as General Manager for Appellant's facility in South Carolina. Respondent was the highest-ranking employee for Appellant in South Carolina. In order to aid Respondent in his role as General Manager, Appellant provided him with resources and corporate benefits, including, but not limited to a vehicle, an apartment, a laptop and a cell phone with the intention that these items would be used to further the Appellant's business.

Appellant provided Respondent with a vehicle and paid for the down payment, each monthly lease payment, as well as for the insurance for the vehicle.

Appellant provided Respondent with a cell phone and laptop containing proprietary and confidential information for the use in operations of the Appellant's business in South Carolina.

The Appellant provided Respondent with access to their bank account so that Respondent could purchase items necessary for the running of Appellant's business.

As Respondent was acting as the sole representative of the Appellant in South Carolina, the Appellant purchased and provided Respondent with an Apartment for him to live in. Appellant paid the down payment, the security deposit, as well as the monthly lease payments on the apartment.

On February 12, 2020, Appellant advised Respondent it would not be renewing Respondent's Contract once it expired on May 1, 2020.

On March 9, 2020, Respondent made an unauthorized and unapproved withdrawal from Appellant's bank account in the amount of $21,042.57. (See Appellant's Exhibit 3) This amount has been retained by Respondent and not returned to Appellant.

The very next day, on March 10, 2020, knowing his employment with Appellant would not be renewed, Respondent resigned from his employment with Appellant.

After Respondent's March 10, 2020, resignation, without authorization or approval from Appellant, Respondent made an unauthorized payment out of Appellant's bank account in the amount of $10,730.61 to pay off the Vehicle. (See Appellant's Exhibit 3)

Despite the fact the down payment for the vehicle, each monthly payment, and the insurance was paid by the appellants, Respondent, without the knowledge or approval of the Appellants, titled the vehicle in his name. Accordingly, once Respondent used Appellants bank account to pay off the vehicle, the vehicle was then retained by the Respondent.

Appellant paid for an apartment for the Respondent and paid the security deposit and each month's rent. Despite that, after his resignation, Respondent retained the security deposit and did not return it to the Appellants.

The benefits conferred upon the Respondent by the Appellant were not for his own personal use or for his financial benefit, but were conferred upon Respondent in order to help facilitate the operations of Appellant's business in South Carolina. Furthermore, the respondent was unjustly enriched to the expense of the Appellant through his retention of the Appellants property and money.

Accordingly, the trial court erred in determining that there was insufficient evidence to prove that Respondent had been unjustly enriched.

2. RESPONDENCT CONVERTED APPELLANT'S PROPERTY WHEN, WITHOUT AUTHORIZATION, HE USED APPELLANT'S FUNDS TO PAY FOR HIS RENT, RETAINED SECURITY DEPOSIT PAID WITH APPELLANT'S FUNDS, AND WHEN HE RETAINED APPELLANT'S COMPANY VEHICLE THAT WAS PAID FOR ENTIRELY BY APPELLANT.

Under South Carolina law, "[c]onversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." Crane v. Citicorp Nat'l Servs., Inc., 313 S.C. 70, 437 S.E.2d 50, 52 (1993). Additionally, "[m]oney may be the subject of conversion when it is capable of being identified." SSI Med. Serv's, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789, 792 (1990).

The Appellant provided Respondent with access to their bank account so that Respondent could purchase items necessary for the running of Appellant's business.

As Respondent was acting as the sole representative of the Appellant in South Carolina, the Appellant purchased and provided Respondent with an Apartment for him to live in. Appellant paid the down payment, the security deposit, as well as the monthly lease payments on the apartment.

On February 12, 2020, Appellant advised Respondent it would not be renewing Respondent's Contract once it expired on May 1, 2020.

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The very next day, on March 10, 2020, knowing his employment with Appellant would not be renewed, Respondent resigned from his employment with Appellant.

After Respondent's March 10, 2020, resignation, without authorization or approval from Appellant, Respondent made an unauthorized payment out of Appellant's bank account in the amount of $10,730.61 to pay off the Vehicle. (See Appellant's Exhibit 3)

Despite the fact the down payment for the vehicle, each monthly payment, and the insurance was paid by the appellants, Respondent, without the knowledge or approval of the Appellants, titled the vehicle in his name. Accordingly, once Respondent used Appellants bank account to pay off the vehicle, the vehicle was then retained by the Respondent. Appellants asked numerous times to get the vehicle back and Respondent refused. Respondent then sold the vehicle and moved to Florida. Respondent never returned the company vehicle to Appellant and then sold the vehicle without Appellant's authorization. Respondent then never provide Appellant with the proceeds from the sale of the company vehicle.

Appellant paid for an apartment for the Respondent and paid the security deposit and each month's rent. Despite that, after his resignation, Respondent retained the security deposit and did not return it to the Appellants.

Accordingly, the trial court erred in determining that there was insufficient evidence to prove that Respondent converted Appellant's property.

3. RESPONDENT BREACHED HIS CONTRACT WHEN HE USED APPELLANT'S FUNDS FOR UNAUTHORIZED PURPOSES.

In South Carolina, in order to prove a breach of contract, a Plaintiff must show: (1) the existence of a contract, (2) a breach of that contract, and (3) damages caused by the breach. Austin v. Orangeburg Homes, LLC, No. 5:20-CV-3406-SAL, 2021 WL 4227498, at (D.S.C. Sept. 16, 2021) (citing S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct. App. 2012)).

Pursuant to the Contract, Appellant provided Respondent with an apartment, paid all rent payments and paid the security deposit.

Pursuant to the Contract, Appellant provided Respondent with a vehicle and paid for the down payment, each monthly lease payment, as well as for the insurance for the vehicle.

Pursuant to the Contract, Appellant provided Respondent with a cell phone and laptop containing proprietary and confidential information for the use in operations of the Appellant's business in South Carolina.

The Appellant provided Respondent with access to their bank account so that Respondent could purchase items necessary for the running of Appellant's business.

As Respondent was acting as the sole representative of the Appellant in South Carolina, the Appellant purchased and provided Respondent with an Apartment for him to live in. Appellant paid the down payment, the security deposit, as well as the monthly lease payments on the apartment.

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Despite the fact the down payment for the vehicle, each monthly payment, and the insurance was paid by the appellants, Respondent, without the knowledge or approval of the Appellants, titled the vehicle in his name. Accordingly, once Respondent used Appellants bank account to pay off the vehicle, the vehicle was then retained by the Respondent.

Appellant paid for an apartment for the Respondent and paid the security deposit and each month's rent. Despite that, after his resignation, Respondent retained the security deposit and did not return it to the Appellants.

The benefits conferred upon the Respondent by the Appellant were not for his own personal use or for his financial benefit, but were conferred upon Respondent in order to help facilitate the operations of Appellant's business in South Carolina.

Accordingly, the trial court erred in determining that there was insufficient evidence to prove that Respondent breached the Contract

CONCLUSION

For all of the foregoing reasons, the Circuit Court's decision should be reversed as stated herein.

June 25, 2025

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PROOF OF SERVICE

I certify that I have served the *Initial Brief of Appellant* by forwarding via electronic mail and electronic filing and/or U.S. mail on June 25, 2025 addressed to the Respondent, Tunc Eren, to the South Carolina Court of Appeals, and to the Berkeley County Court of Common Pleas at the following:

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